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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 540 OF 2006

Laxmibai Pandurang Kale & ors. ... Appellants

V/s

Smt. Kaminabai Yashwant Jagdale & ors... Respondents

Mr. K.B. Sonwalkar for the appellants.

Mr. R.C. Dhuru for Mr. R.R. Dhuru for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 18TH JULY, 2007.

P.C.:

1. The appellant defendant has challenged the findings recorded by both the Courts below that the plaintiff was entitled to one anna nine pai share in the suit property. The appeal filed by the defendant was dismissed, confirming the view taken by the Trial Court.

2. The main submission of the learned advocate for the appellant is that necessary parties are not impleaded in the suit and, therefore, the suit ought to have been dismissed. The second submission is that the plaintiff has sought partition of only a few lands of the parties

namely Survey No. 29, 30 an 31. It is submitted that the plaintiff ought to have sought partition in respect of all the properties and not merely of the aforesaid lands. The third submission is that the suit is barred by limitation because the defendants had purchased the suit property and mutation entries were made accordingly several years ago which were not challenged by the plaintiff. It is, therefore, submitted that the suit ought to have been dismissed on the ground of limitation.

3. Both the Courts below have rightly held that partition can be sought for certain lands and not necessarily for all the lands which the parties may own. The Trial Court has declared the shares of those persons who were not joined as parties to the suit and, therefore, no injustice has been caused to them.

4. As regards limitation, both the Courts below have held that the plaintiff was in fact cultivating the suit lands before filing of the suit and during the pendency of the suit. The Mutation Entries on which the defendants relied on before the trial Court, in fact, showed that the plaintiff’s grandmother had a 1 anna 9 pai share in the property, which the plaintiff was claiming. The plaintiff had also issued a notice for

partition in 1989 which was not replied by the defendants.

5. In my view, there is no need to interfere with the findings of fact recorded by both the Courts below. No substantial question of law is involved.

6. Appeal dismissed.

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